

231013 010000 EST 30 70 33R 102

FILE COPY

OCT 1 1923

W. B. STANSBURY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

124

No. 444 October Term, 1923.

ADELAIDE H. C. FRICK, HELEN C. FRICK, CHILDS
FRICK, HENRY C. McELDOWNEY and WILLIAM WAT-
SON SMITH, EXECUTORS OF THE LAST WILL AND
TESTAMENT OF HENRY C. FRICK, DECEASED,
Plaintiffs-in-Error,

vs.

COMMONWEALTH OF PENNSYLVANIA, Defendant-in-Error.

MOTION TO ADVANCE.

DAVID A. REED,
Attorney for Defendant in Error.

INDEX

	Page
Notice of Motion to Advance.....	1
Motion to Advance.....	3
Statement of Matter Involved.....	4
Reasons for the Motion.....	6

IN THE

SUPREME COURT OF THE UNITED STATES

No. 444 October Term, 1923.

ADELAIDE H. C. FRICK, HELEN C. FRICK, CHILDS
FRICK, HENRY C. McELDOWNEY and WILLIAM WAT-
SON SMITH, EXECUTORS OF THE LAST WILL AND
TESTAMENT OF HENRY C. FRICK, DECEASED,
Plaintiffs-in-Error,

vs.

COMMONWEALTH OF PENNSYLVANIA, Defendant-in-Error.

Notice of Motion to Advance.

Sirs:

Please take notice that upon the annexed statement of matter involved and reasons for the motion, and upon all the papers and proceedings herein, I shall, on Monday, the 1st day of October, 1923, and if motions are not then heard, then at the next succeeding motion day of this Court, make and submit to the Supreme Court of the United States, at a stated term thereof to be held in the Capitol, in the City of Washington, District of

Columbia, the motion, a copy of which is hereunto annexed.

Pittsburgh, Pennsylvania, September 3, 1923.

DAVID A. REED,
Counsel for Commonwealth of Pennsylvania,
Defendant in Error.

To

George Wharton Pepper, Esq., and
George B. Gordon, Esq.,
Attorneys for Plaintiffs in Error.

Service of the foregoing notice and of the within motion, statement of matter involved, and reasons for the motion, is hereby accepted, and plaintiffs in error, by the undersigned, their counsel, hereby certify that they have no objection to the granting of said motion, or to the entry of an order fixing such date for argument of the above entitled case as to the Court may seem proper.

Dated, September 3, 1923.

GEORGE WHARTON PEPPER,
GEORGE B. GORDON,
Attorneys for Plaintiffs in Error.

IN THE
SUPREME COURT OF THE UNITED STATES.

No. 444 October Term, 1923.

ADELAIDE H. C. FRICK, HELEN C. FRICK, CHILDS FRICK,
HENRY C. McELDOWNEY and WILLIAM WATSON
SMITH, Executors of the Last Will and Testament
of HENRY C. FRICK, Deceased, *Plaintiffs-in-Error*,

VS.

COMMONWEALTH OF PENNSYLVANIA, *Defendant-in-Error*.

Motion to Advance.

And now comes the Commonwealth of Pennsylvania, the defendant in error above named, by David A. Reed, its counsel, and moves that the above entitled case be advanced for argument to such date as this Court may direct.

DAVID A. REED,
Attorney for Defendant in Error.

Statement of Matter Involved.

The case is here on writ of error to the Supreme Court of Pennsylvania and on petition for writ of *certiorari* to review the decision of that court.

The precise issue is the amount of inheritance tax payable to the State of Pennsylvania by the estate of Henry C. Frick, deceased, who was a resident of Pennsylvania at the time of his death.

As construed by the Pennsylvania courts, the Act of June 20, 1919, Pamphlet Laws 521, being the inheritance transfer tax law of the State, provides that the transfer of tangible personalty owned by a resident decedent but situate outside the state at the time of death is taxable. The statute provides further that in ascertaining the value of estates transferred "no deduction whatsoever shall be allowed for or on account of any taxes paid on such estate to the Government of the United States or to any other State or Territory." Accordingly, the Supreme Court of Pennsylvania decided that the transfer of Mr. Frick's tangible personalty in New York and Massachusetts was subject to tax, and decided further that no deduction should be allowed for amounts paid or payable by the estate to the United States and other jurisdictions as inheritance taxes.

Plaintiffs in error contend that this decision was wrong, because the statutory provisions on which it was

predicated are unconstitutional and void. It is alleged that those provisions, or one or other of them, are in conflict with the clauses of Article XIV, Section 1, of the Constitution of the United States prohibiting any State to deprive any person of property without due process of law and to deny to any person the equal protection of the laws; and in conflict, also, with Article I, Section 8, of the Constitution of the United States in that they interfere with the power of Congress to levy and collect taxes; and in conflict, finally, with that clause of Article VI of the Constitution of the United States which provides that said Constitution and the laws of the United States in pursuance thereof shall be the supreme law of the land.

Reasons for the Motion.

1. The defendant in error is a State.

2. Under the decision to be reviewed, the sum payable to the State of Pennsylvania is \$1,185,158.14, together with interest at six per cent. per annum from the second day of December, 1920. Article IX, Section 4, of the State Constitution provides that the State cannot create a debt except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or to pay existing debt, and the aggregate debt created to supply deficiencies of revenue cannot at any time exceed \$1,000,000. In view of the amount involved and the debt limitations imposed by the State Constitution, the interest of the State requires a determination of this controversy at as early a date as practicable.

3. The State authorities, in the course of their duties, are required continually to apply the transfer inheritance tax law and to compute the amount of tax due thereunder from the estates of decedents, and until the issues raised herein are decided, such computations, and payments of amounts fixed by them, cannot be made without doubts as to their correctness. This situation causes great inconvenience to the State authorities and to many persons who are administering decedents' estates.
